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Chairman: Mr. Lelong ..... (Haiti)

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The meeting was called to order at 10.10 a.m.

Agenda item 161: Report of the United Nations Commission on International Trade Law on the work of its thirty-fourth session (*continued*) (A/56/17)

1. **Mr. Bliss** (Australia) said that his delegation supported the adoption by the General Assembly of the draft Convention on Assignment of Receivables in International Trade, welcomed the new work programme undertaken by the United Nations Commission on International Trade Law (UNCITRAL), and looked forward to active participation in that work as an observer State. Australia also looked forward to the completion of the work that was being carried out on commercial dispute settlement through arbitration and the enforcement of interim measures of protection. His delegation would welcome the submission of draft legislative provisions on conciliation to the thirty-fifth session of UNCITRAL.

2. Australia also supported the new working methods approved at the thirty-fourth session, consisting of holding week-long working group meetings. The new arrangements would make it possible to reduce travel costs, a matter of some importance to Australia because of its distance from Vienna and New York. His Government supported the enlargement of UNCITRAL to 72 States Members of the United Nations, in lieu of the current 36, as that would maintain the current regional distribution. Moreover, recent sessions of the Commission had been attended by more than 77 Member States, and greater participation by States in the work of the Commission would enhance its status and promote its work more widely in the international community. That would be of benefit to international trade and would promote economic prosperity. Australia looked forward to the possibility of working within an enlarged Commission in the near future.

3. **Mr. Akamatsu** (Japan) expressed his deep appreciation for the contribution made by UNCITRAL in promoting the progressive harmonization and unification of international trade law; in particular, his delegation commended the secretariat and the members of the Commission for their efforts to conclude the draft Convention on Assignment of Receivables in International Trade. Japan fully endorsed the decision and recommendation of the Commission, as contained in paragraph 200 of its report (A/56/17), and hoped that the General Assembly would adopt the draft Convention at the current session. It also welcomed the completion of the draft UNCITRAL Model Law on Electronic Signatures. Japan was contributing to the unification of domestic law in that area, since it had enacted and implemented a law on electronic signatures which was consonant with the UNCITRAL Model Law. With regard to insolvency law, since harmonization of the legislation of various countries was very important, his delegation considered it appropriate for the Commission to formulate guidelines in that area in order to meet that need. In so doing, the Commission should take into account the fact that each country had its own domestic regime and that regimes varied substantially from one country to the next. With regard to international commercial arbitration, he noted with satisfaction the progress made by the Working Group on Arbitration in its consideration of the issue, and he hoped that the Commission would further examine international trade laws and practices in that field.

4. With regard to the working methods of the Commission, while his delegation welcomed the efforts made to improve the efficiency of the Commission's work, it noted with concern that the doubling of the number of topics would impose excessive burdens on the resources of the Secretariat and of Member States. Accordingly, Japan requested the Commission to be careful in setting priorities among the topics and to restrict the number of topics. Lastly, Japan endorsed the recommendation of the Commission concerning the enlargement of its membership, and recognized that doubling the membership would help to maintain a balance among regional groups. Japan trusted that doing so would facilitate the work of the Commission and further enhance the development of international trade law in accordance with actual needs.

5. **Mr. Yengejeh** (Islamic Republic of Iran) reaffirmed his delegation's support of the Commission and its mandate; it was gratifying to note that the Commission had finalized the draft Convention on Assignment of Receivables in International Trade. The adoption of the Convention would greatly facilitate the transfer of receivables and, consequently, would improve the availability of credit at more affordable rates, an essential factor for trade expansion. With regard to chapter IV of the report of the Commission, his delegation endorsed the Commission's

recommendation that the draft Model Law and the related Guide should be adopted at the current session of the General Assembly and be transmitted subsequently to Governments for any necessary action.

6. He welcomed the timely recommendation to the General Assembly that the membership of the Commission be increased from 36 to 72, in view of the increase in the general membership of the United Nations and in response to the desire of many States for active participation in the activities of the Commission. Moreover, the increase in the membership of the Commission would have no financial implications. In the allocation of seats to regional groups, however, the principles of equitable geographical distribution and representation of the major legal systems should be respected. In connection with chapter XIII of the report, he reiterated the concerns expressed by several members of the Commission regarding the possible consequences of the new working methods. It was true that not all members of the Commission would be in a position to provide resources for participation in the Commission's work on six different projects at the same time. Moreover, it was questionable whether the secretariat could, with existing means, service six projects at the same time, a situation that might delay the completion of UNCITRAL projects.

7. The delegation of the Islamic Republic of Iran was concerned about the decreased participation of developing countries in the work of the Commission. It hoped that with the enlargement of the Commission's membership, paragraphs 7 to 10 of General Assembly resolution 55/151 would be effectively implemented. Lastly, he expressed his support for the Commission's recommendation to the General Assembly, contained in paragraph 403 of the report, requesting the Secretary-General to increase the human and financial resources of the UNCITRAL secretariat.

8. **Mr. Ekedede** (Nigeria) said that the UNCITRAL Legislative Guide on Privately Financed Infrastructure Projects was a useful reference for policy makers in developing countries, in terms of establishing a legal framework favourable to private investment in public infrastructure works, while at the same time permitting the reallocation of resources to more pressing social needs. Consequently, his Government had established a special legal regime that encouraged foreign investment. In the area of electronic commerce, Nigeria supported the Commission's decision to prepare uniform rules on the legal issues of electronic signatures. It was still difficult, however, to reach a common understanding of the new legal issues arising from the increased use of electronic signatures and to achieve consensus on the manner of addressing those issues in an internationally acceptable legal framework. In some countries, predominantly developing countries, there was considerable uncertainty regarding the validity of contracts concluded by electronic means. Such uncertainties might have arisen from the fact that in certain cases, messages were generated by computers without direct human intervention, thus raising doubts as to the intent of the parties. His delegation therefore held that electronic commerce must not interfere with the law of contract, but must rather promote international trade by providing increased legal certainty in the conclusion of contracts by electronic means.

9. Nigeria would continue to support the Commission's work relating to insolvency, and his delegation noted with satisfaction the mandate given to the relevant Working Group. The Asian financial crisis had pointed up the need for a strong insolvency regime and for harmonization of the insolvency laws of various countries. His delegation subscribed to the view that such regimes were an important means of preventing or limiting financial crises and facilitating rapid recovery from severe indebtedness. A model law would be of great value to developing countries, for it would foster the adoption of effective insolvency regimes. His delegation commended the Secretariat for its work of collecting and disseminating case law on UNCITRAL texts (CLOUT) and for its training and technical assistance activities, which were very useful to developing countries that lacked expertise in that area. Concerning the increase in the membership of the Commission, his delegation agreed with the views expressed by the Secretariat and some Member States that, since there would be no financial implications for the United Nations, an increase in membership would promote the representative character of the Commission.

10. **Mr. Hwang** Cheol-kyu (Republic of Korea) said that in view of the great increase in international trade, in both scale and quality, a pragmatic, universal legal modality had become indispensable. Moreover, the globalization and liberalization of the world economy had given rise to remarkable changes in international trade, so that the size of the Commission was no longer adequate. The Republic of Korea was rapidly

approaching the status of the tenth largest trading nation in the world and held a keen interest in the further development and implementation of laws in that respect. To that end, it wished to make a greater contribution to the work of the Commission and therefore supported the expansion of the membership to at least 60 States, including the countries which regularly participated in the work of the Commission and its working groups; one of the major considerations should be the importance of the country concerned in international trade.

11. The Republic of Korea believed that the draft Convention on Assignment of Receivables in International Trade and the draft Model Law on Electronic Signatures would serve as a very useful reference point for domestic legislators in establishing a legal framework and would facilitate efficient and expeditious transactions. The legislative guide on insolvency would encourage the adoption at the national level of effective and cooperative regimes on that question, but the working group should bear in mind that the guide would be the result of negotiations among States with a diversity of traditions and administrative practices. It would also be necessary to respect and reflect the various legal systems during the deliberations on the settlement of disputes. Lastly, his delegation welcomed the progress made in respect of the requirement of written form for arbitration agreements, interim measures of protection and the preparation of a model law on conciliation.

12. **Mr. Hybl** (United States of America) said that the harmonization of commercial law brought advantages to all States, whatever their level of economic development. The Convention on Assignment of Receivables in International Trade would open up commercial credit in all regions through the adoption of modern finance law as an international standard; his Government would support the adoption of the Convention by the General Assembly so that it could be opened for signature and ratification without delay. The Convention was long overdue and would enable developing and emerging States to obtain credit from private sector capital markets. It would also encourage the use of modern concepts of secured finance, based on assignments of rights to payments, including future rights, and would allow States to draw on large but often unused reservoirs of collateral derived from moveable goods. World financial institutions supported that goal and mechanism. The Convention included optional provisions on priority rules allowing the establishment of an international, computer-based registry system which would be the key to granting new commercial credits to many States. His delegation would welcome discussions with other States as to the means of establishing such a registry system. The Model Law on Electronic Signatures could encourage the adoption of standards that would be difficult to implement in many commercial transactions. Nonetheless, countries which had not yet adopted law on that subject could use it, with modifications, as a starting point. States with regulatory regimes which limited the use of electronic signatures should consider the approach of the Model Law, which struck a balance between standardization and regulation.

13. Following the completion of the Legislative Guide on Privately Financed Infrastructure Projects, the Commission had established a new working group to prepare more detailed guidance and model provisions for States. That working group should help developing and emerging States by encouraging openness of capital markets in support of the necessary infrastructure development.

14. As part of its efforts to promote the rule of law, which was essential to achieving progress worldwide, the Commission was tackling issues which arose when there were conflicting national regulatory regimes. An example was the joint approval with the International Maritime Committee and other bodies of a document on the carriage of goods by sea. The Commission also supported the Secretariat and national correspondents in upgrading their relevancy and utility and encouraged international harmonization through expanded analysis and recommendations on the implementation of UNCITRAL texts by States and by disseminating its decisions in all the official languages of the United Nations (the CLOUT system).

15. One aspect which remained important was coordination with other bodies concerned with private law. Recently the Commission had decided to prepare a model law on the financing of commercial goods, thereby recognizing the work of the Hague Conference and the International Institute for the Unification of Private Law (UNIDROIT), as well as the work of UNIDROIT on the financing of equipment. It was to be hoped that the work on the carriage of goods by sea would take into account related projects in regional bodies such as the Economic Commission for Europe and the Organization of American States.

16. As to the question of the enlargement of the membership of the Commission, that would enable all regions to participate, and his delegation hoped that consensus would be achieved after careful consideration of the proposals. It also welcomed the initiatives of the Commission to test new work methods, such as reducing the length of working group meetings, which would enable the Commission, subject to the availability of resources, to undertake new projects, which could have substantial importance for a globalized economy.

17. **Mr. Thayeb** (Indonesia) emphasized the role of UNCITRAL in harmonizing and codifying international trade law, in view of the rapid pace of globalization, and noted with satisfaction the Commission's recommendation to the General Assembly that it should adopt the draft Convention on Assignment of Receivables in International Trade; there was a need to ensure the availability of credit at more affordable rates in order to enhance international trade for the benefit of consumers of goods and services, as well as retailers and wholesalers. In addition, the draft UNCITRAL Model Law on Electronic Signatures and the draft Guide to Enactment would assist States in updating and revising their laws and ensure uniformity of the laws concerning paper-based forms of communication, storage and authentication of information. In that connection, his delegation supported the future work of the Working Group regarding the possibility of elaborating an international convention based on the relevant provisions of the Model Law. In the area of insolvency law, the Working Group's mandate of adopting a flexible approach was relevant to the needs of States and would present them with options for updating and reviewing national laws. In that context, it would be useful for the Working Group to take into account the work undertaken by the Asian Development Bank, the International Monetary Fund (IMF) and the World Bank in order to avoid duplication of efforts. The collection and dissemination of case law on UNCITRAL texts (CLOUT) would be of great benefit to many countries, as it promoted the uniform interpretation and application of UNCITRAL texts and conventions. Indonesia concurred with the proposal to prepare a digest of court and arbitration cases which could assist in providing guidance, although it should be limited to the international level and should avoid criticizing the decisions of national courts.

18. Having participated actively as an observer in the Commission's deliberations, Indonesia welcomed the recommendation to increase the membership of the Commission based on the principle of equitable geographical representation; such an expansion would make the Commission more representative of all the economic systems peculiar to the Members of the United Nations. Lastly, his delegation emphasized the importance of providing training and technical assistance to developing countries, and would appreciate any such assistance concerning UNCITRAL texts. In an increasingly globalized environment, it was essential to promote the participation of developing countries and to ensure an equitable distribution of the benefits of globalization, in keeping with the Commission's mandate.

19. **Mr. Kanu** (Sierra Leone) questioned the extent to which the draft Convention on Assignment of Receivables in International Trade would benefit developing countries, which encountered huge difficulties in obtaining access to credit and, where credit was available, were forced to put up with crippling interest rates. It was to be hoped that in the area of security interest, unnecessary obstacles to credit would be eliminated for all developing countries and countries with economies in transition. It would appear that those issues had been addressed; for that reason, his delegation generally supported the adoption of the Convention by the General Assembly. With regard to the draft UNCITRAL Model Law on Electronic Signatures and the draft Guide to Enactment, there were various legal systems in the world, and it would therefore be appropriate to know the extent to which the draft Model Law had been used by States as a basis for their electronic commerce legislation; for its part, his Government was preparing a draft bill based on the letter and spirit of the Model Law.

20. With regard to the Commission's future work on electronic commerce, his delegation agreed with the Chilean delegation that a broad approach should be adopted in dealing with issues relating to electronic transactions, especially the ratione materiae of the United Nations Convention on Contracts for the International Sale of Goods. The question arose whether the Convention was interpreted uniformly in different jurisdictions, particularly the articles on exclusion and interest rates. His delegation noted with satisfaction that the Commission had decided to begin work in new areas, such as transport law, insolvency law and privately financed infrastructure projects. On

the other hand, the Commission might not have taken into account in its deliberations private attempts to set up dispute settlement mechanisms within the electronic commerce framework. Like the delegations of China and the United Kingdom, Sierra Leone believed that the Commission's work plan should be arranged in such a way as to yield maximum benefits, and that its agenda should reflect its ability to deal with issues in depth and avoid duplication. Lastly, his delegation supported the enlargement of the membership of the Commission, bearing in mind the principle of equitable geographical representation and paragraphs 8 to 10 of General Assembly resolution 55/151, concerning the provision of technical and travel assistance to representatives of developing countries and least developed countries. In that regard, he expressed thanks to all States which had made contributions to the Trust Fund for that purpose.

21. **Mr. Medrek** (Morocco) said that a convention on the assignment of receivables in international trade would doubtless help to expand international trade, by facilitating financing and increasing the supply of credit at more accessible rates of interest, thereby benefiting producers, wholesalers and retailers and consumers of goods and services. His delegation therefore had no objection to the General Assembly adopting the instrument in its current form and opening it for signature. It also fully supported the Model Law on Electronic Signatures, which provided practical systems for authenticating electronic signatures based on a standard legal framework that would reduce uncertainty at the international level concerning the new authentication techniques. He also supported the recommendations of the Working Group with regard to future work and urged the Commission to prepare an international instrument on matters relating to electronic contracting without delay, consider appropriate means of removing legal obstacles to electronic commerce in international instruments and carry out a study of the issues related to transfer of rights, in particular rights in tangible goods, by electronic means and mechanisms for publicizing and keeping a record of acts of transfer or the creation of security interests in such goods.

22. On 23 and 24 April 2001, his Government, under the aegis of H.M. King Mohammed VI, had held a national symposium on Morocco's entry into the global information society. All participants had contributed to the implementation of a national strategy for the development of new information and communications technologies. In addition, a law on those technologies, largely based on the Commission's Model Law on Electronic Commerce, had recently been developed. With regard to an enlargement of the membership of the Commission, his delegation reiterated its support for an increase that would ensure greater representation of all legal and economic systems without detracting from the Commission's efficiency. That would foster participation of the representatives of States which could not justify the cost of participation in the Commission's work unless they were members.

23. **Mr. Naidu** (Fiji) said that the Commission should continue to stress the pivotal role of international trade law in complementing the process of liberalization and giving leverage to the position of developing countries, which had great difficulty in keeping abreast of the major industrial powers on what was purportedly a level playing field. However, he hoped that the legal and regulatory mechanisms developed by the Commission would remedy those deficiencies. Privately financed infrastructure projects and assignment of receivables were issues with potential benefits for developing countries such as Fiji; his delegation therefore welcomed the adoption of the draft Convention on the Assignment of Receivables in International Trade and its annex on the priority rules and registration system, which would constitute a framework for cooperation between Governments, the financing community and international trade actors and would give hope to developing countries while safeguarding lenders' interests. Likewise, privately financed infrastructure projects were a facility to which he wished to draw attention, particularly that of the other members of the Pacific Island Forum, although Fiji had unfortunately been unable to participate in the Vienna Colloquium. He hoped that the Commission would provide technical assistance to promote the implementation of that mechanism in the region in the near future; he also hoped that Fiji would be given financial assistance so that it could participate as a member in the Commission's work. His Government was endeavouring to juggle its responsibilities and interests on key legal issues that conflicted on the conference agenda, prohibiting its effective involvement in a highly relevant body. He therefore urged the Commission to bear administrative difficulties in mind, although he recognized that the overwhelming calendar of the United Nations sometimes gave rise to such conflicts.

24. His delegation was in favour of enlarging the Commission if such a change would improve the representation of developing countries and of their interests in international trade. It was well known how poorly those countries fared in the liberalized world and, although that issue fell within the mandate of the World Trade Organization (WTO) and trade-related aspects of intellectual property rights (TRIPS), the Commission should in some way cushion the shocks and difficulties affecting those countries. Lastly, while recognizing the need for greater human and financial resources, he believed that priorities must be set in the Commission's work programme so that it could sustain its workload.

25. **Mr. Ogarrio Ramírez-España** (Mexico), Chairman of the United Nations Commission on International Trade Law, speaking of the Commission's work at its most recent session, stressed the importance of the adoption of the draft Convention on the Assignment of Receivables in International Trade, which would allow international capital to flow safely to other countries in the knowledge that the conditions governing receivables would be adequate and would simplify the procedure that developing countries must follow to obtain credit. Furthermore, the Commission's Model Law on Electronic Signatures provided a broad range of solutions to a current problem.

26. In the past, the Commission had had great success in its work on dispute settlement and, in that connection, international commercial arbitration had gained increasing acceptance in the world of trade and international investment. In light of the new problems that continued to arise and of the success of arbitration, the Commission considered that conciliation should also been encouraged. Since that procedure was, by its very nature, a voluntary one, minimal regulation to promote its development would be appropriate. The Commission would endeavour to promote conciliation by demonstrating all the advantages thereof. It was also working to fill some of the existing gaps in the area of transport law, a task of great importance and scope that would make it possible for the Working Group established for that purpose to accomplish much. The approach to security interests was similar to that taken in the case of assignment of receivables. The development of uniform regimes to regulate such interests would make that extremely valuable method of international financing even more available, particularly to developing countries, for which it was of great importance to be able to offer goods and future income as security and to receive private international financing for infrastructure projects.

27. The Commission's role would be incomplete without extensive dissemination; it therefore sought to collect the greatest possible number of decisions based on its instruments in order to present its point of view on a possible uniform interpretation with absolute respect for the freedom of each country's judges. The goal was to prepare a guide that would include interpretation of those legal instruments. Another aspect of the Commission's work that benefited developing countries, including Mexico, was technical assistance. In that regard, seminars had been held on many of the topics on which the Commission was working. In that connection, he urged States to continue to contribute to the Commission's two trust funds, of which one provided technical assistance and the other helped needy countries to send their representatives to the Commission's meetings. The topics proposed for the future work of the Commission made it necessary to create new working groups and, to that end, increased resources had been requested for the Commission secretariat.

Agenda item 167: Scope of legal protection under the Convention on the Safety of United Nations and Associated Personnel (A/55/637)

28. **Ms. Geddis** (New Zealand) said that her country had a longstanding commitment to United Nations and associated personnel and others involved on the ground in humanitarian operations in post-conflict situations. New Zealand had joined the international condemnation of the violent and sometimes fatal attacks on members of missions in the field. Unfortunately, the frequency and gravity of such attacks had continued to increase during the past decade. There was also a new and disturbing tendency to target humanitarian and, in particular, locally recruited personnel; the latter were particularly vulnerable and, sadly, accounted for the majority of casualties. Obviously, an adequate response to that situation required action on a range of fronts, but there was no doubt that international law had a special role to play. The Convention on the Safety of United Nations and Associated Personnel, which New Zealand and Ukraine had played a lead role in developing and to which several States had recently become parties, offered a legal framework for dealing with some of those crimes. Its full adoption and implementation constituted a first step in the establishment of a scheme

of legal protection for those who risked so much in the interests of peace. However, the Convention was not enough; its scope remained limited, it did not protect humanitarian workers not closely connected to United Nations operations and its application to locally recruited personnel was incomplete. Regrettably, the threats to personnel on the ground had no regard for the fine distinctions made in the Convention.

29. New Zealand welcomed the report of the Secretary-General on that issue, which analysed the issues related to the scope of legal protection under the Convention and included useful recommendations for interim and long-term legal steps which could be taken in response to those problems and which New Zealand supported; she would focus on two of them. Her Government believed that the recommendation that key provisions of the Convention should be incorporated into the status-of-forces or status-of-mission agreements concluded when a peacekeeping operation was deployed represented a useful interim step that it fully supported, and that the recommendation that Member States should consider the development of a protocol to the Convention in order to extend its scope and ensure its automatic application to all United Nations operations and categories of personnel was worthy of full discussion by experts.

30. The Committee's schedule allotted little time to that issue; thus, it could not fulfil the mandate entrusted to it by the General Assembly. It would therefore be appropriate to convene an ad hoc committee to consider all related matters and to propose solutions on the basis of the recommendations contained in the report of the Secretary-General.

31. **Mr. Valdes** (Chile), speaking on behalf of the countries of the Rio Group, recalled the background to the adoption of the Convention on the Safety of United Nations and Associated Personnel and said that, despite the adoption of that Convention in 1994, the safety of personnel, including those participating in humanitarian and peacekeeping operations, had continued to deteriorate, and in particular the abhorrent practice of using locally recruited personnel as an easy and preferred target had become widespread. After considering the suggestions made in the report of the Secretary-General on the topic, and aware that they would need to be considered in depth, the Rio Group supported the idea that a working group of the Committee should be established for that purpose; it would be able to produce an effective and universal instrument which would guarantee the protection of all United Nations personnel.

32. **Mr. Niehaus** (Costa Rica) said that his delegation endorsed the statement made by the representative of Chile on behalf of the Rio Group. Costa Rica expressed admiration for the professionalism, bravery and dedication of United Nations personnel in natural disasters and humanitarian crises, even at the cost of their own lives, as was illustrated by the case of the four United Nations staff members who had recently died during the bombing in Kabul. However, it felt that the 1994 Convention on the Safety of United Nations and Associated Personnel had serious limitations and defects. Costa Rica had ratified that instrument in 2000, but had had to make a reservation to its sphere of application.

33. In his Government's view, the application of that Convention during an armed conflict was problematic, since as soon as the United Nations became a combatant, the Convention could not be applied. In such cases, its personnel was protected by the 1949 Geneva Conventions and their protocols, and attacks perpetrated against personnel were not crimes under the 1994 Convention, but war crimes or legitimate military operations. The determination of whether or not international humanitarian law applied in such situations should be made objectively, in the light of events on the ground. That legal regime applied automatically as soon as a party effectively became a combatant. The Convention did not adequately reflect that concept, and article 2 merely excluded from its sphere of application operations which included collective measures involving the use of force. In such cases, international humanitarian law should have priority over the application of the Convention, and that was reflected in the reservation made by Costa Rica at the time of ratification.

34. His delegation supported the Secretary-General's intention to recommend to the General Assembly or the Security Council, as the case might be, that they should make a formal declaration of the existence of an exceptional risk so as to make the Convention applicable to United Nations operations which were not peacekeeping operations. It also agreed with the Secretary-General on the need to incorporate the key provisions of the Convention into the status-of-forces or status-of-mission agreements concluded with the host State. However, it believed that responsibility for personnel lay not only with the host State, but also with

other parties to the conflict. Costa Rica, like the Secretary-General, believed that local personnel should be considered part of United Nations personnel for the purposes of the Convention. However, it did not share the Secretary-General's ambitious interpretation of article 1 (b) (iii) concerning the personnel of humanitarian non-governmental organizations. Since the effectiveness of those bodies depended precisely on their impartiality and independence, only persons deployed under an agreement between the non-governmental organization concerned and the United Nations could be considered as associated personnel.

35. Lastly, he did not believe it necessary to designate the Secretary-General as a "certifying authority" in order to attest to the existence of an agreement or a declaration in accordance with the Convention. Nor was his delegation convinced of the value of adopting a protocol to extend the applicability of the 1994 Convention to situations which were better governed by international humanitarian law, or to attacks perpetrated against humanitarian non-governmental organizations.

36. **Mr. Bliss** (Australia) said that some recent events, such as the shooting down of a United Nations helicopter in Georgia and the attacks against UNICEF and UNHCR offices in Pakistan, confirmed the need to provide greater protection for United Nations and associated personnel. Australia, which had always been a reliable and substantial contributor to peacekeeping and other operations of the United Nations, regarded the safety of personnel as paramount, and welcomed the opportunity to consider the scope of the Convention on the Safety of United Nations and Associated Personnel. It was therefore keen to strengthen the protection afforded to such personnel and, in particular, supported the idea of incorporating key elements of the Convention into the status-of-forces and status-of-mission agreements concluded by the United Nations. Those elements included the obligation to prevent attacks against personnel participating in United Nations operations and the obligation to establish such attacks as crimes in the national law of the host State.

37. Australia also supported the Secretary-General's determination to protect United Nations and associated personnel involved in risky, non-peacekeeping operations. As indicated in his report, the Convention applied automatically to peacekeeping operations and, in order for it to apply to non-peacekeeping operations, the General Assembly or the Security Council needed to declare that an exceptional risk existed to the safety of United Nations personnel. Australia supported all measures to ensure that such declarations were made when necessary so as to ensure coverage by the Convention and welcomed proposals to achieve that goal.

38. Australia supported the Secretary-General's efforts to protect the personnel of humanitarian intergovernmental and non-governmental organizations not formally linked to United Nations operations. Although clearly the Convention did not apply to such personnel, there was a strong case for drawing up a separate international instrument to protect personnel who provided important humanitarian relief. Careful consideration would have to be given to the level of legal protection to be afforded, bearing in mind the various legal mandates under which United Nations and non-United Nations operations were authorized. Lastly, Australia strongly supported the establishment of an ad hoc group of the Committee as a priority to consider measures to strengthen the Convention's protective regime.

39. **Mr. Marechal** (Belgium), speaking on behalf of the European Union, said that the Central and Eastern European countries associated with the European Union, Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia and Slovenia, the associated countries Cyprus, Malta and Turkey, as well as Norway, EFTA country member of the European Economic Area, aligned themselves with his statement.

40. The dangers and risks faced by United Nations and associated personnel had continued to increase over the past decade, as illustrated by the recent case of the shooting down of a helicopter of United Nations observers in Georgia. The European Union unequivocally condemned deliberate attacks against personnel participating in United Nations missions and in humanitarian operations; it considered that situation of insecurity to be intolerable and called for the adoption of urgent measures to reinforce the safety of United Nations and associated personnel. Under international law, primary responsibility for the security and protection of humanitarian personnel and United Nations and associated personnel lay with the host Government. Parties involved in armed conflicts were also under an obligation, in accordance with the 1949 Geneva Conventions and their additional protocols, to ensure the safety of such personnel. In

that regard, the European Union welcomed the fact that the Rome Statute of the International Criminal Court qualified as a war crime attacks against personnel involved in humanitarian missions.

41. The Convention on the Safety of United Nations and Associated Personnel, which had been adopted in 1994, had entered into force in 1999, and had been ratified by 54 States, prohibited all attacks directed against United Nations and associated personnel, their equipment and official premises. However, attacks continued to increase to ever more alarming proportions, which had led the General Assembly, in its resolution 54/192 of 17 December 1999, to request the Secretary-General to submit a report containing an analysis and recommendations addressing the scope of the 1994 Convention. The report of the Secretary-General (A/55/637) described the attacks made upon the safety of personnel, the current system, and measures that could be taken to improve the safety of personnel. The Secretary-General indicated that the Convention was not working in a satisfactory way, in particular because it did not provide the necessary protection for United Nations and associated personnel, including locally recruited personnel. In order to remedy those shortcomings, the Secretary-General made a series of recommendations to strengthen the existing regime of the Convention and also suggested extending its scope through an additional protocol. The Committee could readily consider and adopt some of the recommendations, such as the proposal to incorporate the Convention's key provisions into status-of-forces or status-of-mission agreements, the obligation to prevent attacks against members of peacekeeping operations, the obligation to establish attacks against members of peacekeeping operations as crimes punishable by law and the obligation to prosecute or extradite the offenders. Other recommendations deserved a thorough in-depth analysis. The European Union stood ready to consider the recommendations of the Secretary-General and supported the establishment of a working group during the current session of the General Assembly.

42. **Mr. Tarabrin** (Russian Federation) said that the issue under consideration was very topical, since throughout the world hundreds of people participating in peacekeeping and humanitarian operations were the victims of attacks, such as the United Nations observers on the helicopter which had been shot down in Georgia on 7 October 2001 or the victims of the recent bombing in Kabul. The Russian Federation had its own experience in that respect. It had lost many nationals participating in United Nations peacekeeping operations in the context of conflict resolution in the area of the Commonwealth of Independent States. A reliable legal base must be established to ensure the safety of such personnel and the application of the 1994 Convention was essential in that respect. The safety of personnel would be considerably increased if universal participation was achieved in that Convention. The Russian Federation had ratified the Convention in April 2001 and called on all States to follow its example. His delegation expressed appreciation to the Secretary-General for his full report on the issue (A/55/637), which provided a useful basis for deliberations. However, it warned against the risk of hasty and drastic measures in that respect. Some of the provisions of the report had far-reaching consequences, and did not fully take into account all the aspects of conflicts in which United Nations personnel were involved. It also needed to be asked to what extent the extension of protection to the personnel of autonomous organizations not formally linked to the United Nations was justified. In order to consider those issues, an impartial and balanced approach must be taken, bearing in mind, inter alia, the current and future parties to the Convention; his Government was prepared to contribute to that effort.

43. **Mr. Pravednyk** (Ukraine) said that his Government considered the issue of the safety of United Nations and associated personnel a matter of high priority. In the past eight years, more than two dozen Ukrainian nationals serving as peacekeepers had lost their lives and another 50 had suffered serious injury. Just the day before, reports had come in of the tragic death of three Ukrainians taking part in the United Nations Observer Mission in Georgia as a result of an attack against their helicopter which had resulted in the death of six other people too.

44. Ukraine had been among the initiators of the elaboration of the Convention on the Safety of United Nations and Associated Personnel, adopted in 1994. However, the provisions of the Convention had proved to be inadequate to ensure the same level of protection for United Nations and associated personnel, including locally recruited personnel, engaged in operations other than those specifically authorized by the Security Council or the General Assembly. The scope of the legal protection provided by the Convention must be extended, and his delegation supported the elaboration and adoption of an additional protocol to that effect.

Convinced of the need to strengthen protection for United Nations and associated personnel, his delegation also supported the in-depth consideration of the Secretary-General's report by the General Assembly and was in favour of establishing an ad hoc committee for that purpose. Another important aspect of enhancing the protection of humanitarian assistance personnel and associated personnel was the need to ensure respect by all parties for the rules of international law, including international humanitarian law, and for the neutral and impartial character of the work of such personnel. It should be emphasized in that regard that the International Criminal Court could play an important role in bringing to justice those responsible for serious violations of international humanitarian law. His delegation also firmly supported the idea of including specific practical measures based on the provisions of the Convention in status-of-forces or status-of-mission agreements.

45. **Mr. Gomaa** (Egypt) said that his country had contributed personnel to many relief operations carried out by the United Nations in which many of its nationals had been disabled, injured or killed. His delegation welcomed the Secretary-General's report and his suggestion that provisions aimed at greater protection of United Nations personnel should be incorporated in agreements between the United Nations and the countries where its operations were deployed. The Convention left room for much doubt and suspicion as to the categories of personnel to which it referred and its implications for the sovereignty of the countries concerned. His delegation had not yet decided on its position with regard to the need to elaborate an additional protocol and recommended that other possibilities should be considered, taking into account the interests of different countries. Further consideration was warranted before hasty decisions, such as the establishment of a working group, were adopted. The established practice of the United Nations was to exhaust all possibilities before creating an ad hoc committee or working group of the Sixth Committee.

46. **Mr. Fomba** (Mali), referring to the report of the Secretary-General on the scope of legal protection under the Convention on the Safety of United Nations and Associated Personnel (A/55/637), said that, although a text might be perfect from the technical standpoint, its true value would depend on whether it was regularly and responsibly applied. The consensual and voluntary nature of international law was at once an advantage and a limitation on its efficacy. It was essential that there should be sound thinking to begin with on concepts and methods and a precise definition of the basic issues, such as the absolute or relative concept of safety, the notion of personnel and a clear view of the type of protection regime desired and the appropriate instrument for the purpose. The Convention provided the essential basis by embodying the following fundamental ideas: the absolute duty to ensure the safety and security of personnel (article 7), the obligation to cooperate (article 7); the obligation to prevent through due diligence (article 11); the obligation to disseminate the Convention (article 19); the obligation to prosecute violations (article 14); and the establishment of a monitoring and review mechanism (article 23).

47. His delegation believed that, while prosecution was necessary, prevention was even more important. In that regard, it was in favour of the idea of setting up a procedure whereby the Security Council or the General Assembly would make a "declaration" that there existed an exceptional risk to the safety of the personnel, although that step would not resolve the problem of humanitarian operations conducted under a standing mandate. The suggestion that the Secretary-General might be designated the "certifying authority" had some practical value. Incorporating key provisions of the Convention in the status-of-forces or status-of-mission agreements would also improve the situation in cases where the host State was not a party to the Convention. However, his delegation shared the opinion of the Secretary-General that the elaboration of a protocol was the most satisfactory solution, since it would eliminate the need for a "declaration" and make the scope of the Convention unconditional *ratione materiae* and *ratione personae*. If the requirement for a declaration was retained, his delegation would support the extension *ratione personae* of the right of initiative of the Secretary-General. Lastly, the principle of unconditional, systematic and automatic protection should govern any legal framework on the subject, and any mechanism or instrument based on that principle deserved support.

The meeting rose at 12.40 p.m.